

REMARKS

Status Of The Claims

Claims 1, 3-5, 7-9, 11-14 and 16-18 are pending in the application.

Claims 1, 3-5, 7-9, 11-14 and 16-18 stand rejected.

The Amendment

Claims 1 and 5 have been amended to state that the flavoring agent is to be selected from the group consisting of lemon, orange, lime, apricot, grapefruit, banana, apple, pineapple, grape, strawberry, tutti frutti, fruit punch, cinnamon, anise, coriander, ginseng, fennel, honey, caramel, toffee, molasses, nutmeg, pepper, cinnamon, caramon, ginger and clove. Support for the amendment is found in the specification at page 4, 3rd and 4th paragraphs. Claims 3, 7, 11 and 16 have been amended accordingly.

The Rejections Under 35 U.S.C. 102(b)/103(a)

The Examiner has sustained the rejection of claims 1, 4, 5, 8, 14, 17 and 18 under 35 U.S.C. 102(b) as anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Record et al. (US 5,372,824) for the reasons set forth in the prior rejection. The Examiner has also sustained the rejection of claims 1, 3-5, 7-9, 11-14 and 16-18 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cherukuri et al. (US 5,009,893) for the reasons set forth in the prior rejection. The Examiner holds as follows:

Both Record et al. and Cherukuri et al. teach the combination of a flavor and N-ethyl-p-menthane-3-carboximide. Applicants includes "fruit, herbal, sweet and spice" as flavoring agents. Record et al. teach mint and a sweetener which both meet applicants' claims. Cherukuri et al. teach mint, sweetener, and cherry which meet applicants' claims. It is noted that mint is an herb and therefore record et al. and Cherukuri et al. meet applicants claims."

The Examiner is respectfully requested to reconsider and withdraw the rejection for the reasons as follow.

Applicants claimed invention, as amended herein, concerns an enhanced flavoring composition comprising at least one flavoring agent selected from the group consisting of lemon, orange, lime, apricot, grapefruit, banana, apple, pineapple, grape, strawberry, tutti frutti, fruit punch, cinnamon, anise, coriander, ginseng, fennel, honey, caramel, toffee, molasses, nutmeg, pepper, cinnamon, caramon, ginger and clove, and further comprises an amount of N-ethyl-p-menthane-3-carboxamide effective to enhance the flavoring agent wherein the N-ethyl-p-menthane-3-carboxamide is present at about 0.04 to about 2.2 % by weight of the enhanced flavoring composition. The invention further concerns

chewing gums and confectionery compositions containing a flavoring effective amount of the enhanced flavoring compositions.

Record et al. (US 5,372,824) teach mint-flavored chewing gums having reduced bitterness. There is no teaching of, nor is there any suggestion, nor any teaching which could be held to suggest, a useful product containing other than a mint flavorant. Record et al. cannot therefore be held to anticipate applicants' claimed invention as amended herein. Further, Record et al. do not teach or suggest that cooling agents be used to enhance the mintiness of the mint flavors taught therein nor is there any suggestion that cooling agents be used for flavor enhancement of other than mint flavorants. Record et al. therefore cannot be held to suggest applicants' claimed invention.

Cherukuri et al teach use of carboxamides with menthol to reduce the bitterness found with the use of menthol alone as a cooling agent in chewing gums and confectionery. While Cherukuri et al. do not state that the invention only concerned the improvement of mint flavors as Record et al. did, Cherukuri et al. do state that the problem that they were correcting was found only in mint flavor use. No other flavoring agents are taught. The only example which contains a flavor agent other than a mint-based flavor is a comparative example portrayed as a negative result, i.e., no cooling effect was found in a cherry flavored candy. Cherukuri et al. therefore cannot be held to anticipate applicants' claims drawn to an enhanced flavoring composition comprising at least one flavoring agent selected from the group consisting of lemon, orange, lime, apricot, grapefruit, banana, apple, pineapple, grape, strawberry, tutti fruiti, fruit punch, cinnamon, anise, coriander, ginseng, fennel, honey, caramel, toffee, molasses, nutmeg, pepper, cinnamon, caramon, ginger and clove. Nor is there any suggestion of, nor any teaching which could be held to suggest, a useful product containing other than a mint flavorant. The only non-mint example, cherry, leads away from combining N-ethyl-p-menthane-3-carboxamide with the flavorant. One would not be led to the claimed enhanced non-mint flavorants. Cherukuri et al. therefore cannot be held to suggest applicants' claimed invention.

In view of the above, the Examiner is respectfully requested to withdraw the rejection of claims 1, 4, 5, 8, 14, 17 and 18, as amended, under 35 U.S.C. 102(b) as anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Record et al. and the rejection of claims 1, 3-5, 7-9, 11-14 and 16-18, as amended, under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cherukuri et al.

Conclusion

In view of the above applicants believe all of the claims in this application are in condition for allowance. If any questions remain, the resolution of which would be advanced by conference (telephonic or personal) with applicants' agent, the Examiner is invited to contact said agent at the telephone or the fax number noted below.

Respectfully submitted,
Shirley A. Barcelon et al.

Date: 8/16/00

By: 
Linda A. Vag
Their Agent
Reg. No.: 32,071

Telephone No.: (973) 385-4790

Fax No.: (973) 385-3117